

Gray Davis, Governor  
Maria Contreras-Sweet, Secretary, Business, Transportation, & Housing Agency  
Paula Reddish Zinnemann, Real Estate Commissioner

Winter/Spring 2002



## Message from the Commissioner

The Department of Real Estate continues its commitment to

protect the public interest in real estate transactions and provide related services to the real estate industry. As such, I am pleased to share some recent innovations and improvements.

Consumer outreach is one of my top priorities. Information for homebuyers is now available on the DRE Web site, covering important topics such as how to select an agent, how to find a home and the loan and escrow process. Development of a new predatory lending section with tips for consumers and licensees is underway.

In addition to virtual information, DRE staff members are available to personally speak on real estate related topics to interested groups.

To better serve license applicants, the DRE is working with the Department of Justice to develop a fingerprint interface aimed at expediting the licensing process.

To ensure that licensees have the knowledge they need to conduct business, the Department is proposing legislation to make Real Estate Practices a mandatory, rather than optional education course. The legislation also requires that licensees pass an exam to be given in each of the four mandatory continuing education classes:

Agency, Ethics, Trust Fund Handling, and Fair Housing. In addition, the DRE is now monitoring continuing education providers on a random basis to ensure the courses offered are in compliance with DRE requirements, including that course content is consistent with what the DRE approved.

To further help educate licensees, DRE Enforcement Deputies are now visiting brokers' offices on a random basis to survey their practices, assist brokers to comply with the Real Estate Law and prevent potential violations that could be harmful to consumers and brokers alike.

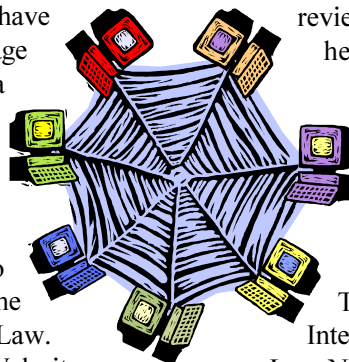
Due to newly enacted legislation, finding out about escrow violations is easier

*Continued on page 4*

## WHO IS WATCHING THE WEB?

The Internet is here to stay. It may not have taken over the real estate and mortgage business as some had forecasted, but it is a dynamic medium for the marketing of real estate and mortgage loan services.

Today, just as in times past, the advent of new technology brings challenges to the people who embrace it. One of the challenges is to ensure that information being sent out over the Internet is in compliance with the Real Estate Law. Each and every broker who either operates a Web site or has employees that operate Web sites needs to review those Web sites to ensure they are in compliance. Commissioner's Regulation 2725 requires a broker to exercise reasonable supervision over the activities of his or her salespersons. Reasonable supervision includes, as appropriate, the establishment of policies, rules, procedures and systems to



review, inspect and manage the activities of his or her licensees. Therefore, a broker should establish a policy to ensure that the broker is reviewing all Web site advertising for compliance with the Real Estate Law. It is also good practice for salespersons to have their Web site reviewed by their broker, prior to the site going online.

The Department is currently monitoring the Internet for compliance with the Real Estate Law. Numerous violations have been noted in regards to how information is being presented. Remember, the Internet is just another advertising medium. The same rules apply to the Internet as those which apply if you are running an advertisement in the local newspaper or distributing a flyer. Brokers need to be aware of and be involved in any licensed activity being conducted over the Internet by their

*Continued on page 5*

## MORTGAGE LOAN BULLETIN

Vol. 12 No. 2 Winter/Spring 2002

STATE OF CALIFORNIA  
GRAY DAVIS, Governor

BUSINESS, TRANSPORTATION AND  
HOUSING AGENCY  
MARIA CONTRERAS-SWEET  
Secretary

DEPARTMENT OF REAL ESTATE  
PAULA REDDISH ZINNEBANN  
Real Estate Commissioner

**Principal Office**  
2201 Broadway  
Sacramento, CA 95818

**Mailing Address**  
P.O. Box 187000, Sacramento, CA  
95818-7000

**Telephone**  
(916) 227-0770

John R. Liberator  
Chief Deputy Commissioner

Robin Wilson  
Chief Counsel

Randy Brendia  
Managing Deputy Commissioner IV  
Mortgage Lending

Gary H. Sibner  
Senior Deputy Commissioner  
Mortgage Lending Advertising

Mark Tutera  
Senior Deputy Commissioner  
Mortgage Lending

The *MORTGAGE LOAN BULLETIN* is published as an educational service to real estate licensees engaged in mortgage lending activities.

Reproduction, in whole or in part, is authorized with attribution to the Department of Real Estate.

DRE's Internet address is:  
<http://www.dre.ca.gov>



## Legislative Update

Several Assembly and Senate Bills that are of interest to, or may potentially affect, mortgage loan brokers became law effective January 1, 2002. Below is a brief description of each.



**AB 795** makes several changes to the Real Estate Law:

**Multi-Lender Loans** – amends Business and Profession Code §10177 to explicitly allow the Real Estate Commissioner to discipline, or deny issuance of, a license for a violation of Business and Professions Code §10229.

**Multi-Lender Loans** – amends Business and Professions Code §10229 to require a broker or person who becomes the servicing agent for notes or interests sold pursuant to Business and Professions Code §10229, to file a specified notice with the Department, and when meeting specified criteria, to file certain CPA-prepared reports.

**Disclosures** – amends Business and Professions Code §10240(c) to require a broker to retain on file, for a period of three years, an acknowledgement of specific required disclosures. Brokers who give the Mortgage Loan Disclosure Statement (RE882 or RE883) to the borrower pursuant to Business and Professions Code §10240(a) are not affected by the change.

**SB364** amends Civil Code §2948.5 to provide that a borrower, in a loan transaction involving a one to four unit residential dwelling, may not be required to pay interest on the principal for a period of more than one day prior to recording the mortgage or trust deed if the proceeds are paid into an escrow; or if there is no escrow, the date upon which the loan proceeds are made available for withdrawal. The bill makes additional provisions if the recording occurs on a Monday or a day following a bank holiday. The changes do not affect regulated loans as defined by Business and Professions Code §10245. A "regulated loan" is a first trust deed less than \$30,000 or a junior trust deed less than \$20,000 originated by a real estate broker.

**AB1090** amends Civil Code §2941 to require, in part, that the beneficiary, or assignee of the beneficiary, deliver to the trustee the documents necessary to reconvey, or cause to be reconveyed, the deed of trust within 30 calendar days after any obligation secured by any deed of trust has been satisfied. Additionally, it places further requirements for the delivery of documents to the trustor and reduces the maximum fee for preparation, execution and recordation of the full reconveyance from \$65.00 to \$45.00 and would prohibit the fee from being charged unless the fee is included in a payoff demand statement. AB1090 also amends Civil Code §2943 to reduce the maximum charge for a payoff demand statement from \$60.00 to \$30.00 and makes other changes.

The above summary is not intended to be construed as an all-inclusive statement of the statutes. A complete and careful reading of the new laws is recommended. The statutes may be accessed on the Internet at [www.dre.ca.gov](http://www.dre.ca.gov) under **2002 Real Estate Law**.

Questions regarding the above law changes may be directed to the Mortgage Loan Activities Unit at (916) 227-0770. 🇺🇸

## Multi-Lender Survey Results – THE SEQUEL

In the fall of 2000, the Department of Real Estate and the Department of Corporations conducted a survey of brokers engaged in the arranging of multi-lender or fractionalized loans secured by real property.

In a multi-lender securities transaction, private investors provide funds to a broker who arranges for a loan secured directly by real property. In exchange for the investment, the broker arranges to return to the investors a certain amount of money received from the borrower. Investors retain a fractional, undivided interest in the promissory note (or retain one of a series of notes) evidencing the loan. The promissory notes and fractional interests in the notes are securities under the Corporate Securities Law of 1968 (CSL). In order to arrange a multi-lender loan transaction, a broker must obtain a permit from the Department of Corporations or construct the loan transaction so it is exempt from the permit requirement. The exemption for the requirement of obtaining a permit is contained in Business and Professions Code (BPC) §10229.

At the same time that BPC §10229 was enacted on January 1, 1998, giving the Department of Real Estate jurisdiction over multi-lender loan transactions, the Corporations Code was amended to state, in part “the sale of undivided interests in a note secured directly by real property that complies with all of the provisions of Section 10229 of the Business and Professions Code...” shall be exempt from the permit requirement. Failure to comply with **all** of the provisions of BPC §10229 may result in criminal and civil penalties under the Corporations Code as the broker would be guilty of selling unpermitted securities. There are over 15 separate requirements under BPC §10229 that must be satisfied in order to qualify for the exemption.

The results of the original survey conducted in the Fall of 2000 were published in the Spring 2001 issue of the Mortgage Loan Bulletin along with a compliance checklist. The survey results were also distributed to parties interested in multi-lender regulatory issues. In order to determine if the level of compliance and understanding of BPC §10229 had increased as a result of the original survey, the Department of Real Estate and Department of Corporations conducted a follow-up survey in the Fall of 2001. As in the original survey, 20 brokers engaging in multi-lender loan transactions were randomly selected. Approximately five transactions for each broker were reviewed. In order to be consistent, the same areas of BPC §10229 as in the original survey were reviewed for compliance.

The follow-up survey disclosed that brokers were fully

complying in the following areas:


- Securing promissory notes with real property located in California (BPC §10229[c]).
- Preventing a broker’s interest in the real property (BPC §10229[d][1]).
- Utilizing identical terms in the promissory notes (BPC §10229[f]).

However, the follow-up survey disclosed non-compliance by brokers in the following areas:

- Avoiding any subordination clause in promissory notes (BPC §10229[c]).
- Documenting suitability of investors (BPC §10229[e]).
- Ensuring there are 10 or less lenders/purchasers (BPC §10229[e]). (One limited liability company which appeared to have as many as twenty-six individual investors appeared to be involved in as many as one hundred transactions.)
- Recording the deed of trust/assignment (BPC §10229[f]).
- Providing appraisals to investors (BPC §10229[g]).
- Retaining signed servicing contracts (BPC §10229[j]).
- Using the appropriate disclosures (BPC §10229[k]).
- Delivering disclosures to investors (BPC §10229[k]).

The follow-up survey revealed only marginal improvement in compliance. Generally, significant non-compliance with Sections 10229(e), 10229(g)(3) and 10229(k) continues to exist.

Given the continuing level of non-compliance, it is, again, highly recommended that any broker engaging in the arranging, selling, or servicing of multi-lender loans fully review their business practices to ensure they are in compliance with the Real Estate Law. Along with the results of the original survey in the Spring 2001 issue of the Mortgage Loan Bulletin (available on the DRE Web site [www.dre.ca.gov](http://www.dre.ca.gov)), the Department published a brief summary of the 15 separate requirements of Business and Professions Code §10229. To fully review the law, amended by Assembly Bill 795 (see Legislative Update article) effective January 1, 2002, see the 2002 Real Estate Law Book (available on the DRE web site).

Questions regarding multi-lender loan transactions and BPC §10229 may be directed to the Mortgage Loan Activities Unit at (916) 227-0770. 

## Reverse Mortgages Interest

The Department of Real Estate's late summer release of *Reverse Mortgages - Is One Right for You?* generated a great deal of interest from consumers as well as the mortgage lending industry. The new consumer guide was developed to inform seniors about the unique loan product. It explains reverse mortgages, includes factors to consider before committing to a reverse mortgage, and provides resources for further research.

To ensure seniors were made aware of the availability of *Reverse Mortgages - Is One Right for You?*, the DRE enlisted the help of the Department of Consumer Affairs, the Department of Aging, Area Agencies on Aging, AARP and other consumer groups. In return, the DRE offered to provide staff to speak to interested groups of consumers.

The Ventura County Area Agency on Aging was the first to host a DRE presentation. On October 11, 2001, Senior Deputy Commissioner Gary Sibner of the DRE Mortgage Loan Section spoke to a large group about reverse mortgages.

The DRE is still willing to provide staff

to speak to interested consumer groups about reverse mortgages. To inquire as to a presentation, please submit a written request to the DRE Mortgage Loan Section.

*Reverse Mortgages - Is One Right for You?* is available on the DRE Web site [www.dre.ca.gov](http://www.dre.ca.gov). 📄



## Message from the Commissioner

*Continued from page 1*

than ever. Individuals interested in determining whether a specific escrow company, title company escrow or real estate broker with an escrow division has been the subject of administrative action by the Department of Corporations, California Department of Insurance or the DRE can now visit any one of the three departments' Web sites to gain access to the information needed.

In support of the Governor's housing policies, the DRE continues to expedite all qualified affordable housing projects. Also, the Subdivisions Section is revising subdivision application forms and instructions to be more comprehensive and user-friendly.

These are just a few of the projects the DRE is working on in addition to the everyday services provided by our dedicated staff. I applaud their efforts and hope you will enjoy the results. May you have a happy, healthy and prosperous year. 📄

## Residential Mortgage Loan Report

It is that time of year again! Real estate brokers who are *direct* lenders in certain types of loan transactions are required, pursuant to Health and Safety Code §35815 and §35816, to report to the Department of Real Estate (DRE) activities related to the number of applications received from, and number and dollar amount of loans made to, the public for home purchase and/or home improvement purposes. If a real estate broker reports such lending activity to HUD under the provisions of the federal Home Mortgage Disclosure Act (HMDA), **it is not necessary for the real estate broker to report to the Department of Real Estate.**

The State of California Residential Mortgage Loan Report (RE 857) must be submitted to the DRE by all real estate brokers whose assets total \$10 million or less and who regularly *make* real estate purchase



and/or home improvement loans. "Regularly" is defined to mean twelve or more transactions annually during the immediately preceding calendar year that, in aggregate, total more than \$500,000. **Licensees who only broker, and do not make loans are not required to report.** For additional information regarding whether a real estate broker acting as a lender needs to file a Residential Mortgage Loan Report (RMLR) or HMDA report go to the DRE Web site at [www.dre.ca.gov/mlbltn.htm](http://www.dre.ca.gov/mlbltn.htm) (Mortgage Loan Bulletin, Spring 2001, page 7).


Mortgage lending data is to be collected annually and reported on the RE 857 by March 31 of the following year. Thus, the report for calendar year 2001 must be submitted to the DRE by March 31, 2002. Remember, when submitting the RMLR, please continue to use the 1990 Census Data for reporting purposes. Questions regarding the Residential Mortgage Loan Report may be directed to the Sacramento Mortgage Lending Unit at (916) 227-0770. 📄

## WHO IS WATCHING THE WEB?

Continued from page 1

salespersons. Common violations that have been noted include failure to provide the required license disclosures (Business and Professions Code §10235.5 and Commissioner's Regulation 2847.3) and violations of Commissioner's Regulation 2848 (i.e. failure to include an equally prominent disclosure of the APR when quoting an interest rate, etc.).

Another common problem noted in Internet advertising is the use of unauthorized fictitious business names (dba's). In this age of instantaneous information, a licensee who fails to advertise under the name in which they are licensed may find himself or herself losing a client and/or being contacted by the DRE. It only takes a click of the mouse for a potential client to go from your Web site to the DRE Web site to verify your license status. If the client is unable to verify your license, you may lose their business. In order to avoid these problems, make sure that you are using the name in which your license was issued and include your license number. In all types of advertisements and on your Web site, your Web site address should be displayed in full. For example, "www.loans.com." should not be displayed as simply "loans.com." Any such abbreviation of the address may be considered fictitious and would therefore require the broker to add the name as a fictitious business name to the broker's license.

Therefore, just like any other type of advertising, in order to avoid your Web site being exposed to the DRE's scrutiny, ensure that it is in compliance with the Real Estate Law. Please call the Mortgage Loan Activities Unit at (916) 227-0770 with questions regarding Internet or any other form of advertising. 

## A Valuable Resource for Mortgage Loan Brokers

The DRE Web site is a valuable resource for mortgage loan brokers. The 2002 Real Estate Law, Commissioner's Regulations, *Reference Book*, *Frequently Asked Questions – Mortgage Loan Brokering in California*, *Mortgage Loan Bulletin* and other publications are available on the Web site for your use.

The Web site offers an efficient way to interact with the DRE. You may change your mailing address, check your license status and the license status of salespersons employed by you, obtain forms, find continuing education courses and review Internet business/advertising guidelines. You can also find DRE contact information, link to other government agencies and trade associations and more!

Further, the Web site may assist you in servicing your customers. *Using the Services of a Mortgage Broker* provides basic information which may help you explain your role and assist your customers in making informed decisions.

We encourage you to bookmark **www.dre.ca.gov** and use the DRE Web site to your advantage. 



California Home

Welcome to **California**

Monday, February 11, 2002

Department of Real Estate

Our mission: To protect the public in real estate transactions and provide related services to the real estate industry.

Tour our site!

Reference Book | Proposed Reg Changes | 2002 Real Estate Law

Featured Items

In the Spotlight

Topics of Interest

DRE would like to bring the following to your attention:

- Information for Homebuyers
- Glossary of Real Estate Terms (pdf)
- Small and Disabled Veteran Business Opportunities
- Instructions for License Applicants

California's energy challenge - be energy efficient!

California is facing a serious energy challenge. Working together, we can meet this challenge. Please spend a little time reviewing the information on this site, and join the millions of other Californians conserving energy.

more...

DRE Energy Plans...

Mentoring makes a difference

Have you ever thought about being an adult mentor to a child or young person? Just in case you haven't...

more...

Search DRE Records

- Licensee lookup
- Change mailing address
- Scheduling tests
- Scheduled test lookup
- Test results
- License issued
- Statutory courses
- CE courses
- PRLS licensees
- MOG broker licensees

Customer Survey

Contact Us | Conditions of Use | Privacy Policy | Tech Problems  
© 2000 State of California. Gray Davis, Governor.

Winter/Spring 2002 — Mortgage Loan Bulletin

## Revisions to DRE Forms

Several forms, used primarily in loan transactions where the lender or note purchaser is a private investor, have been revised and are now available on DRE's Web site at [www.dre.ca.gov](http://www.dre.ca.gov) under **Forms**:

- **Lender/Purchaser Disclosure Statement** (RE 851A, B and C) was revised in September 2001 to add a space for the broker/corporation license identification number and to add the Department's licensing information telephone number pursuant to Business and Professions Code §10236.4. Other minor changes were made. The RE851C was further revised to add language regarding appraisals pursuant to Business and Professions Code §10232.5(b).

- **Trust Account Report (Multi-Lender Transactions)** (RE 852) was revised in January 2002. The reverse side reflects amended language in Business and Professions Code §10229 pertaining to servicing agents. The content of the form itself has not changed.
- **Multi-Lender Transaction Notice** (RE 860) was revised in January 2002. The form reflects amended language in Business and Professions Code §10229 pertaining to servicing agents. The content of the form has not changed.

Questions regarding these forms may be directed to the Mortgage Loan Activities Unit at (916) 227-0770. 